

R E M A R K S

- Claims 1 to 59 are pending in the present application.
- Of the pending claims, only claims 1, 19 to 22, and 46 to 59 are independent.
- All of the pending claims stand rejected.
- Claim 20, an independent claim, has been cancelled herein.

1. Section 101 Rejection

Claims 1 – 46, 56, 58 and 59 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicants traverse this rejection for the reasons set forth below.

The proper legal test for the presence of statutory subject matter is only that a claimed process or apparatus produce a “useful, concrete and tangible result.” State Street Bank & Trust Co. v. Signature Fin. Group, Inc., 149 F.3d 1368, 1375, 47 USPQ2d 1596, 1602 (Fed. Cir. 1998), cert. denied, 525 U.S. 1093, 142 L.Ed.2d 704, 119 S.Ct. 851 (1999) (“For purpose of our analysis, as noted above, claim 1 is directed to a machine programmed with the Hub and Spoke software and admittedly produces a ‘useful, concrete, and tangible result.’...This renders it statutory subject matter, even if the useful result is expressed in numbers, such as price, profit, percentage, cost, or loss.”); AT & T Corp., 172 F.3d at 1361 (“[T]he focus is understood to be not on whether there is a mathematical algorithm at work, but on whether the algorithm-containing invention, as a whole, produces a tangible, useful result.”). See also, State Street Bank, 149 F.3d at 1373 (“In Alappat, we held that data, transformed by a machine through a

series of mathematical calculations to produce a smooth waveform display on a rasterizer monitor, constituted a practical application of an abstract idea...because it produced ‘a useful, concrete and tangible result’ -- the smooth waveform”); *State Street Bank*, 149 F.3d at 1373 (“in *Arrhythmia Research Technology Inc. ...*, we held that the transformation of electrocardiograph signals from a patient’s heartbeat by a machine through a series of mathematical calculations constituted a practical application of an abstract idea...because it corresponded to a useful, concrete and tangible thing -- the condition of a patient’s heart” (citations omitted)).

It is noted that the threshold for utility is not high – an invention is “useful” under §101 if it is capable of providing some identifiable benefit. *Juicy Whip Inc. v. Orange Bang Inc.*, 185 F.3d 1364, 1367, 51 USPQ2d 1700, 1703 (Fed. Cir. 1999). This is to be contrasted with an invention which “is useful only in the sense that it may be an object of scientific research.” *Brenner v. Manson*, 383 U.S. 519, 532 (1966). The invention must have “substantial utility”, in other words a “specific benefit” which “exists in currently available form.” *Id.* at 534 – 35.

While other criteria, if satisfied, may be useful in indicating the presence of a “useful, concrete and tangible result” (and therefore indicate that a claim is directed to statutory subject matter), the absence of such criteria does not preclude a finding of statutory subject matter. The “ultimate issue” always has been whether a claim as a whole is drawn to statutory subject matter. *See, AT & T Corp.*, 172 F.3d at 1359. Such other criteria are not requirements, but merely some of several ways that can

demonstrate that an invention produces a useful, concrete and tangible result.

For example, the reciting of physical limitations may be helpful, but not necessary to render a claim statutory. AT & T Corp., 172 F.3d at 1359 (“Whatever may be left of the earlier test, if anything, this type of physical limitations analysis seems of little value...”). Even where a claim incorporates a mathematical algorithm, in contrast to focusing on a physical limitations inquiry, the inquiry deemed the “ultimate issue” “focuses on whether the mathematical algorithm is applied in a practical manner to produce a useful result.” AT & T Corp., 172 F.3d at 1359 – 60.

In another example, a physical transformation by a claimed process is one example (but not a requirement) of how a mathematical algorithm may bring about a useful application. AT & T Corp., 172 F.3d at 1357. See also, Diamond v. Diehr, 450 U.S. 175, 192, 67 L.Ed.2d 155, 169, 101 S.Ct. 1048, 1059 – 60 (1981) (the “e.g.” signal denotes that physical transformation is an example, not an exclusive requirement for satisfying §101); Arrhythmia Research Tech., 958 F.2d 1053, 1060, 22 USPQ2d 1033, 1039 (Fed. Cir. 1992) (the transformation simply confirmed that Arrhythmia’s method claims satisfied §101 because the method produced a number which had specific meaning – a useful, concrete, tangible result – not a mathematical abstraction).

Certain features are not helpful to the proper analysis, and have no bearing on the presence of statutory subject matter. For example, whether a result of a claim is expressed in numbers makes no difference. State Street Bank, 149 F.3d at 1374, (“[E]ven if the useful result is expressed in numbers, such as price, profit, percentage, cost or loss,” the invention that

produces that useful result is statutory); Arrhythmia, 958 F.2d at 1060 (“That the product is numerical is not a criterion of whether the claim is directed to statutory subject matter.”).

When a mathematical algorithm included within a claimed process is “applied to produce a number which had specific meaning – a useful, concrete, tangible result – not a mathematical abstraction”, that process claim satisfies §101. AT & T Corp., 172 F.3d at 1357, (citing Arrhythmia, 958 F.2d at 1060). Under the proper standard, claims have been found statutory because they produced useful results such as “a final share price”, State Street Bank, 149 F. 3d at 1373; a “value of a PIC indicator” which represents “information about the call recipient’s PIC”, AT & T Corp., 172 F.3d at 1357; and a condition of a patient’s heart, Arrhythmia, 958 F.2d at 1060.

In discussing the proper legal test, the Court of Appeals for the Federal Circuit has also acknowledged the judicially-created exceptions to statutory subject matter. See, e.g., AT & T Corp., 172 F.3d at 1355 (“[The Supreme Court] has specifically identified three categories of unpatentable subject matter: ‘laws of nature, natural phenomena, and abstract ideas.’” (quoting Diamond v. Diehr, 450 U.S. at 185)); State Street Bank, 149 F.3d at 1373. The Court also clarified that “certain types of mathematical subject matter, standing alone, represent nothing more than abstract ideas until reduced to some type of practical application, i.e., ‘a useful, concrete and tangible result.’” State Street Bank, 149 F.3d at 1373. Clearly, a claimed invention that satisfies this proper standard for statutory subject matter (e.g., by producing a useful, concrete and tangible result) cannot, by definition,

also fall within one of the judicially-created exceptions to statutory subject matter (e.g., abstract ideas).

The pending claims are directed to statutory subject matter because they each recite a useful, concrete and tangible result. Example useful, concrete and tangible results produces by the independent rejected claims will now be briefly discussed.

Claim 1 recites a step of “establishing an agreement with a customer to provide X units of a product for an agreement price” as well as a step of “arranging with a retailer to have the product redeemed at the retailer.” Both of these steps are directed to a useful, concrete and tangible result. For example, establishing the agreement provides the customer protection against price increases, and an ability to pay less than a retail price for a product. Arranging with the retailer to have the product redeemed at the retailer produces the useful, concrete and tangible results of, for example, influencing the customer’s behavior in a retailer’s favor and providing the retailer with indications of future demand. Specification, page 66, lines 6 – 9.

Claim 19, for example, recites a step of “authorizing a redemption of up to X units of a product...”. This step produces useful, concrete and tangible results of enabling a customer to obtain from a retailer the units of a product a customer has agreed to purchase and allowing the retailer to verify the validity of the customer’s redemption identifier by obtaining authorization for the redemption.

Claim 20 has been cancelled herein, rendering the rejection of it moot.

Claim 21 recites a step of “controlling **the redemption device.**” This step produces the useful, concrete and tangible result of helping to ensure

that a customer does not obtain more units of a product than is authorized per the customer's agreement or redemption identifier. Claim **21** further recites a step of "establishing an agreement" (a step that produces the useful, concrete and tangible result discussed with respect to claim **1**). Claim **21** still further recites a step of "storing information corresponding to the agreement." This produces the useful, concrete and tangible result of allowing the information about the agreement to be subsequently retrieved for authorization and other purposes. Claim **21** still further recites a step of "providing the additional units to the customer." This produces the useful, concrete and tangible result of a customer obtaining additional units of a product.

Further, Applicants note that claim **21** is directed to statutory subject matter even under the §101 standard proposed by the Examiner. The Examiner has suggested that in order for a claim to be directed to statutory subject matter, the claim should recite which steps are being performed "within the technological arts." Current Office Action, page 5, last paragraph. Claim **21** in fact recites "**controlling a redemption device to stop dispensing a product**". Thus, claim **21** is clearly directed to the technological arts and satisfies any such requirement (which Applicants respectfully maintain does not exist under current Section 101 analysis). If the rejection of claim **21** is maintained under Section 101, Applicants request clarification of why claim **21** is not directed to the 'technological arts.'

Claim **22** recites a step of "receiving a redemption identifier from a customer". This provides a useful, concrete and tangible result of allowing a verification and / or authorization of redemption of a product by the

customer by retrieving agreement information based on the redemption identifier. Claim **22** further recites a step of “retrieving data...”, which produces a useful, concrete and tangible result of allowing verification and / or authorization of redemption of a product. Claim **22** further recites a step of “providing Y units of the product to the customer”, which produces a useful, concrete and tangible result of a customer obtaining Y units of the product.

Claim **46** is directed to computer-executable process steps stored in a computer-readable medium. Accordingly, claim **46** is within the technological arts and thus directed to statutory subject matter under the Examiner’s proposed test for patentable subject matter. Claim **46** further recites steps that produce useful, concrete and tangible results (as discussed with respect to claim **1** above).

Claim **56** recites a step of “receiving an offer”, which produces a useful, concrete and tangible result of allowing an evaluation and acceptance of the offer. Claim **56** further recites a step of “indicating an acceptance of the offer” which produces a useful, concrete and tangible result of informing a customer that the customer’s offer has been accepted and allows the establishment of an agreement based on the offer. Claim **56** further recites a step of “transmitting identifier”, which produces a useful, concrete and tangible result of a customer being able to use the redemption identifier to obtain a product. Claim **56** further recites a step of “authorizing the redemption, which produces a useful, concrete and tangible result of a customer being permitted to obtain a product. Claim **56** further recites a step of “receiving data indicating a redemption”, which produces a useful, concrete and tangible result of allowing an update in a database record of a

customer's agreement to reflect the redemption, which may be used subsequently to authorize or deny authorization for a customer's subsequent attempts to redeem the product.

Claim 58 recites a step of "establishing an agreement" and a step of "arranging with a retailer to have the product provided", which steps produces the useful, concrete and tangible results discussed with reference to claim 1 above. Claim 58 further recites a step of "receiving data indicating that the customer has received a second number of units of the product" which produces a useful, concrete and tangible result of allowing an update of a data record to reflect the customer's receipt of the second number of units of the product, which may be used subsequently to authorize or deny authorization for subsequent attempts by the customer to receive units of the product.

Claim 59 recites a step of "establishing an agreement", which produces a useful, concrete and tangible result as discussed with reference to claim 1 above. Claim 59 further recites a step of "receiving data indicating that the customer has received a second number of units of the product" which produces a useful, concrete and tangible result as discussed with reference to claim 58 above.

2. Section 103 Rejection

2(a). Claims 1 – 4, 6 – 19, 22 – 33 and 35 – 59

Claims 1 – 4, 6 – 19, 22 – 33 and 35 – 59 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,512,570 to Garfinkle ("Garfinkle" herein) in view of U.S. Patent No. 6,332,128 to

Nicholson (“Nicholson” herein) and further in view of Official Notice. Current Office Action, page 6. Applicants respectfully traverse this rejection for the reasons set forth below.

As a preliminary matter, Applicants note that it appears that Examiner intended to refer to Garfinkle rather than Nicholson in the following assertion: “Nicholson teaches a method comprising establishing an agreement to provide X units of a product for an agreement price (FIG 5D).” Current Office Action, page 6. If Applicants are incorrect in this assumption, the Examiner is invited to correct Applicants’ understanding of the rejection in a subsequent Office Action.

Applicants traverse the 103(a) rejection of claims **1 – 4, 6 – 19, 22 – 33 and 35 – 59** on the grounds that a *prima facie* case of obviousness has not been established with respect to these claims because the references relied upon in the rejection cannot properly be combined such that they result in the claimed combination.

“A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).” MPEP 2141.02.

Garfinkle describes a system wherein a photographer may store a digital image on an image server. Abstract. The photographer may then order a visual print of the digital image “in a variety of formats and sizes, such as photographic prints or enlargements of photographic prints, and photographic merchandise including T-shirts, sweatshirts, mugs, mouse pads, puzzles, ties, buttons, electronic slide shows, and other items bearing

the digital image.” Col. 5, lines 24 - 29. The photographer may choose to have the photographic print delivered to the photographer or to “a retail outlet, e.g., developer 12, and picked up by the photographer 8.” Col. 9, lines 35 – 36. In other words, a photographer may agree to purchase a photographic print in one or more formats and, in one embodiment, pick up the photographic print at a retail outlet. The photographic print is a unit of a product that may be picked up by the photographer at the retail outlet.

Official Notice has been taken that it “was old and well known in the art to track and return information regarding amounts redeemed in the form of a non-integer (fueling stations).” Current Office Action, page 7.

The Examiner relies on a combination of Garfinkle and Official Notice as teaching the embodiment of claim 1, which recites (i) establishing an agreement with a customer to provide X units of a product for an agreement price; (ii) arranging with a retailer to have the product redeemed at the retailer; and (iii) receiving data indication a redemption of Y units of the product, wherein Y is a non-integer. In particular, the Examiner is relying on Garfinkle as teaching steps (i) and (ii) and Official Notice as teaching step (iii). Applicants respectfully submit that Garfinkle cannot properly be combined with the Official Notice.

It would not make sense to modify Garfinkle in the manner suggested by the Examiner, such that a unit of a product that is a non-integer may be picked up by the photographer. As explained above, in Garfinkle the unit of a product that a photographer may pick up at a retail outlet is a visual print in some format (e.g., a photograph, a mug, a T-shirt). Allowing a redemption of a unit that is a non-integer would result in the nonsensical result of the photographer picking up a portion of the visual print (e.g., half a

photograph, a quarter of a mug, a third of a sweatshirt). When Garfinkle is considered *as a whole*, as is required, it is clear that it leads away from the proposed combination and from the claimed embodiments.

Applicants additionally traverse the rejection of claims **1 – 4, 6 – 19, 22 – 33 and 35 – 59** on the grounds that a *prima facie* case of obviousness has not been established because no proper motivation to combine the references has been provided. The asserted motivation to combine Garfinkle with Nicholson (“because this would assure that only the proper amount of fuel is dispensed”; Current Office Action, page 6) fails at least because the motivation would not cause one of ordinary skill in the art to make the proposed combination. This is because Garfinkle does not disclose dispensing of fuel or the desirability of dispensing fuel and Nicholson already provides for a method of assuring that only the proper amount of fuel is dispensed. The asserted motivation for combining Garfinkle, Nicholson and Official Notice (“because this would allow the customer and the supplier to pay and get paid for only the product which is dispensed”; Current Office Action, page 7) fails at least because the motivation would not cause one of ordinary skill in the art to make the proposed combination. This is because (i) each reference already provides a respective method for allowing the customer and supplier to pay and get paid for only the product that is provided to the customer, (ii) Garfinkle does not disclose dispensing of fuel or the desirability of dispensing fuel, thus making the monitoring system of Nicholson unnecessary in Garfinkle, and (iii) allowing redemption of Y units of a product that is a non-integer is not combinable with Garfinkle

due to the nature of the products being purchased in Garfinkle, as discussed above.

2(b). Claim 5

Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Garfinkle in view of Nicholson and in view of Official Notice and further in view of U.S. Patent No. 6,014,634 to Scroggie et al. (“Scroggie” herein). Current Office Action, page 12. Applicants respectfully traverse this rejection for the reasons set forth below.

First, claim 5 is dependent from claim 1 and is thus patentable at least for the same reasons as discussed with respect to claim 1 in section 2(a) above.

Second, Scroggie (the only reference upon which the Examiner relies as allegedly teaching the “subsidy”) does not describe a subsidy as the term is used in the specification and certainly does not describe the claimed steps of “identifying a difference between the agreement price and a settlement price to be paid to the retailer; and identifying a subsidy offer greater than the difference.” A subsidy, as the term is used in the specification, refers to an amount “paid to the controller 200 in return for customer acceptance of an obligation 930. As will be described below, such subsidies can be used by the controller 200 to make up a difference between payments received from a customer under an agreement and payments made to retailers under the agreement.” Specification, page 19, lines 18 – 21. Scroggie merely describes offers (e.g., for coupons) from manufacturers that a customer may select. Column 8, lines 7 – 67. The customer does not incur an obligation as a result of selecting an offer and no amount is provided to a controller as a

result of the customer's acceptance of an offer. Accordingly, Scroggie does not teach or suggest a "subsidy offer" and does not anticipate claim 5.

Applicants further traverse the §103(a) rejection of claim 5 on the grounds that no proper motivation to combine Scroggie with the Garfinkle/Nicholson/Official Notice combination has been provided. It has been asserted that "it would have been obvious...to search for a manufacturer's subsidy that was greater than the difference, because this would assure that a profit is made and the company would not go out of business by agreeing to sell products below cost." Current Office Action, page 13. This motivation fails at least because (i) none of the references in the combination describe or suggest the desirability of selling products below cost; (ii) none of the references in the combination describe a difference between an agreement price at which a product is sold to a customer and a settlement price that is paid to the retailer for the product, thus creating a need to make up such a difference; and (iii) none of the references (including Scroggie) describe or suggest the desirability of a "subsidy offer".

Additionally, the statement of the motivation to combine is a statement of a desirable result that may be obtained from the proposed combination, were the only suggestion for the proposed combination can be found in Applicant's disclosure. This is improper because the motivation to combine must be found in the record outside of Applicant's disclosure.

2(c). Claims 20 and 21

Claims **20 and 21** stand rejected under 35 U.S.C. §103(a) as being unpatentable over Garfinkle in view of Nicholson and in view of Official

Notice and in further view of U.S. Patent No. 6,321,984 to McCall (“McCall” herein). Current Office Action, page 13.

Applicants traverse this rejection for the reasons set forth below.

First, claim **20** has been cancelled herein. Accordingly, the rejection of it is moot.

Second, the rejection of claim **21** is improper because, as discussed in detail in Section 2(a) above, Garfinkle cannot properly be combined with the Official Notice.

2(d). Claim 34

Claim **34** stands rejected under 35 U.S.C. §103(a) as being unpatentable over Garfinkle in view of Nicholson and in view of Official Notice and further in view of the article entitled “Standing Up To Chargebacks” by Russell Harris, Apparel Industry Magazine, January 1996 (“Harris” herein). Current Office Action, page 14. Applicants respectfully traverse this rejection for the reasons set forth below.

First, the rejection is improper because Garfinkle cannot be combined with the Official Notice for the reasons discussed in detail in Section 2(a) above.

Second, none of the references, alone or in combination, teach or suggest determining (i) “the agreement price multiplied by the quantity remaining under the agreement”, much less (ii) “the difference [between the amount of the product redeemed and the quantity remaining under the agreement] multiplied by a retail price of the product”. Further, none of the references, alone or in combination, teach or suggest “extracting a payment from the customer equal to [the sum of (i) and (ii)] plus a penalty”.

The Examiner has generally asserted that “the combination of Garfinkle/Nicholson and Official Notice teach the abstract calculations of the instant claims (see above).” Current Office Action, page 14. However, upon careful review of the Office Action, Applicants cannot find any previous discussion by the Examiner of the references teaching the claimed calculations. Further, upon careful review of the references, Applicants cannot find any teaching or suggestion of the claimed calculations. Accordingly, Applicants respectfully request clarification as to what portions of the references teach or suggest the claimed calculations.

Third, Applicants respectfully submit that a *prima facie* case of obviousness has not been made with respect to claim 34 further because no proper motivation to combine Harris with the Garfinkle, Nicholson and Official Notice combination. The Examiner is relying upon Harris as teaching a penalty. The Examiner asserts that it would have been obvious “to include in the combination of Garfinkle/Nicholson and Official Notice penalties as taught by Harris, because penalties are a means of assuring that terms agreed to are accomplished according to contract and also act as a means for modifying behavior.” Current Office Action, page 14. However, it does not make sense to include penalties in either Garfinkle, Nicholson, or the Official Notice. In Garfinkle, a customer who does not pick up a product at a local retailer simply does not obtain the product and Garfinkle does not suggest any reason to extract a penalty from such a customer. In Nicholson and the Official Notice, a customer does not agree to perform any activity, such as redeem a product. The customer is simply provided with a reward such as a discount on gasoline or a code redeemable for free gasoline. The customer is under no obligation to utilize the reward and it would not be

legally possible to apply a penalty to the customer for failing to utilize the reward since, again, the customer never agrees to utilize the reward and is under no obligation to utilize the reward.

3. Official Notice Traversal

Regarding Applicant's traversal of the Official Notice in the First Office Action, the Examiner has asserted that no reference to support the officially noted subject matter is necessary because Applicant's traversal was not adequate. The Examiner further asserts that the Officially Noted subject matter is taken to be admitted prior art since Applicants did not adequately traverse. The Examiner cites *In Re Chevenard* (CCPA 1943) for the latter assertion.

First, Applicants respectfully disagree that Applicants' previous traversal was not adequate. Applicants agree that a "traverse" is "[a] formal denial of a factual allegation in the opposing party's pleading." Black's Law Dictionary (7th Ed. 1999). However, "If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial." Fed. R. Civ. P. 8(b). Applicant's previous traversal amounted to an assertion that Applicants are without sufficient knowledge or information to believe the truth of the Official Notice and thus constituted an adequate traversal.

Second, Applicants respectfully submit that unsupported assertions do not constitute substantial evidence and thus cannot be taken as admitted prior art, irrespective of Applicants' adequate traversal or lack thereof.

If examination at the initial stage does not produce a *prima facie* case of unpatentability, then **without more** the applicant is entitled to grant of the patent. In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992) (emphasis added).

To reject claims in an application under section 103, an examiner must show an unrebutted *prima facie* case of obviousness. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

Until a *prima facie* case has been made, Applicants have no duty to rebut or offer evidence showing patentability. In re Piasecki, 745 F.2d 1468 (Fed. Cir. 1984), quoting In re Surrey, 50 C.C.P.A. 1336, 319 F.2d 233, 235, 138 U.S.P.Q. (BNA) 67, 69 (CCPA 1963). “As a basic rule of evidence, **once** an inference of fact is established the burden of persuasion **shifts** to the applicant, who in turn must produce evidentiary facts.” *Id.* See also In re Grabiak, 769 F.2d 729, 733, 226 USPQ 870, 873 (Fed. Cir. 1985) (the PTO did not establish a *prima facie* case of obviousness, and thus did not shift to Applicant the burden of coming forward with evidence).

To establish a *prima facie* case of obviousness, the Examiner must make certain factual findings, including that all of the claim limitations are taught by the prior art as a whole. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).” MPEP 2142. As the U.S. Supreme Court has recently made clear, factual findings of the PTO must be supported by substantial evidence. Dickinson v. Zurko, 527 U.S. 150 (1999).

Unsupported assertions do not constitute substantial evidence. As the Federal Circuit has made clear, "deficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic

knowledge' or 'common sense.' 'The Board's **findings** must extend to all material facts and **must be documented on the record**, lest the "haze of so-called expertise" acquire insulation from accountability. 'Common knowledge and common sense,' even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires authority. In re Lee, 277 F.3d 1338 (Fed. Cir. 2002), *emphasis added*.

As stated above, if the Examiner fails to establish a *prima facie* case of obviousness, Appellants are under no obligation to prove the patentability of the claim. Accordingly, Applicants were under no obligation to traverse the Official Notice. Further, irrespective of whether Applicants traversed the Official Notice, the unsupported assertions remain unsupported assertions and thus do not qualify as substantial evidence irrespective of Applicants' traversal or lack thereof and cannot be taken to be Admitted Prior Art.

Further, Applicants maintain that Applicants have insufficient information to form a belief as to whether the officially noted matter is "old and well known" and thus again request a reference in support thereof.

Conclusion

For the foregoing reasons it is submitted that all of the claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Magdalena M. Fincham at telephone number (203) 461 - 7041 or via electronic mail at mfincham@walkerdigital.com.

Petition for Extension of Time to Respond

Applicants hereby petition for a **one month** extension of time with which to respond to the Office Action. If an additional extension of time is required in addition to that requested, please grant a petition for that extension of time which is required to make this Response timely.

Please charge as follows:

Charge: \$55.00

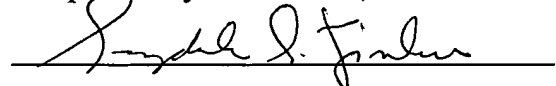
Deposit Account: 50-0271

Order No. 99-082

Charge any additional fees or credit any overpayment to the same account.

A duplicate copy of this authorization is enclosed for such purposes.

Respectfully submitted,



June 11, 2004

Date

Magdalena M. Fincham
Attorney for Applicants
Registration No. 46,085
Walker Digital, LLC
mfincham@walkerdigital.com
(203) 461 - 7041 / voice
(203) 461 - 7300 / fax